

REMARKS

This is in response to the Office Action mailed on March 27, 2008. In this Office Action, claims 1-6, 9-13, 17-43 and 53-68 were rejected. With this amendment, claims 1, 22, 35, 53 and 61 have been amended. No new matter has been added to the application. Reconsideration and allowance of claims 1-6, 9-13, 17-43 and 53-68 are respectfully requested.

On page 2 of the Office Action, claims 1-6, 9-13, 17, 18, 22-26, 28, 29, 33-38, 41, 43, 53-56, 59-64, 67, and 68 were rejected under 35 U.S.C. § 102(b) as being anticipated by JP 2001-45959 (hereinafter JP '959). The Office Action alleges that JP '959 discloses a food comprising whole eggs which are mixed with a water-absorbent thickener, wheat flour, water, and the pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. Specifically, the comments made in the Office Action regarding the applicant's arguments presented in the previous response indicate that the claims did not recite that the attributes of a yellow-white appearance of an egg, the consistency of a cooked egg, and the taste of a cooked egg.

Independent claims 1, 22, 35, 53, and 61 have been amended to include the elements that the egg-based substance has a yellow-white appearance of an egg, an egg-like taste and an egg-like consistency. Support for these elements can be found throughout the specification. It is stated in the background portion of the specification (page 2, lines 16-18) that the goal of the invention is to achieve the same properties, such as taste, texture, or visual appearance, of freshly cooked eggs formed by cooking raw eggs that have not been subjected to moisture removal. On page 35, lines 7-11, it is stated that "[b]esides being visually appealing to consumers, the presence of only little, if any, free water upon thawing of a frozen form of the egg-based product or a frozen form of any derivative of the egg-based product demonstrates that the thawed egg-based product and the thawed derivatives of the egg-based product will exhibit good organoleptic properties." These improved organoleptic properties enhance the egg-like consistency and taste of the product. Furthermore, it is stated on page 27 of the specification, that the egg-taste of the egg-based product can be enhanced by using high concentrations of natural liquid egg component. The amount of egg-based material used in the present invention, as recited in claims 1, 22, 35, 53, and 61, is a

range of 45-99.5 weight percent egg-based material. The recitation of such a high concentration ensures that the product has an egg-like appearance, taste, and consistency. In contrast, the JP '959 reference discloses a range of 30-45 weight percent whole eggs and states that this is used in the creation of cream-puff cake. Clearly the product of JP '959 would not have the appearance, taste, and consistency of a real egg. Particularly, the JP '959 reference discloses that the inner phase has a sponge-like texture and is kneaded with other foods such as fruits, custard cream, whipped cream, and chocolate. It is clear that JP '959 reference discloses the construction of a dessert-like pastry rather than an egg-based material with the appearance, taste, and consistency of an egg like the invention recited in claims 1, 22, 35, 53 and 61. Applicant believes amended claims 1, 22, 35, 53 and 61 are allowable over JP '959. Furthermore, applicant believes dependent claims 2-6, 9-13, 17-21, 23-34, 36-43, 54-60 and 62-68 are allowable at least based on their relation to the independent claims. Reconsideration and allowance of claims 1-6, 9-13, 17-43 and 53-68 are respectfully requested.

On page 3 of the Office Action, claims 22-26, 28, and 53-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 63-216455 (hereinafter referred to as JP '455). The Office Action alleges that JP '455 discloses a process of preparing a food wherein an egg solution is blended with a cooked water-absorbent material (bread crumbs) which is heated and coagulated. The Office Action further contends that the amount of egg material in the '455 patent would naturally fall within the range of the instant claims. The Office Action further asserts that the amount of water absorbing thickener is higher than that called for in the instant claims, and that the phrase 'preferably used' in the JP '455 patent leaves open the possibility of other concentrations being employed. Applicant believes that claims 22-26, 28, and 53-55 are not obvious over the JP '455 reference.

Simply stating that a particular amount of water-absorbing thickener is preferred in the JP '455 reference does not render every other fathomable amount of water-absorbing thickener within the scope of the invention. It also does not render any other particular amount obvious. The amount of water-absorbing material disclosed by the JP '455 reference is twice the maximum of the range recited in amended claims 22 and 53. An amount of 16 weight percent water-absorbing

thickener, if employed in the present invention, would adversely affect the appearance, taste and color of the egg-based product. A range of 0.2-8.0 weight percent of water-absorbing thickener has been recited in the claims 22 and 53 based on the results of research on the formation of a superior egg-based product as disclosed in the present application. As stated in the background section of Applicant's specification, it is a common problem that when egg products are frozen and reheated, they are often dry due to loss or separation of water content, which causes the product to lose its organoleptic properties. An amount of water-absorbing material necessary to absorb a desired level of water should be employed, but beyond that amount, additional water-absorbing material would dramatically change the consistency of the product, and therefore alter its organoleptic properties. An amount of 16 weight percent water-absorbing thickener, if used in the current invention, would cause the product to be dry and gritty, which is precisely the problem that is aimed at being avoided by implementation of the present invention as claimed. Therefore, the invention as recited in amended claims 22 and 53 is not obvious over the JP '455 reference. Applicant respectfully contends that amended claims 22 and 53 are allowable over the JP '455 reference. Furthermore, Applicant believes dependent claims 23-26, 28, and 54-55 are allowable at least based on their relation to independent claims 22 and 53. It is respectfully requested that the rejection of claims 22-26, 28, and 53-55 be withdrawn and the claims be allowed.

On page 3 of the Office Action, claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '959. The Office Action alleges that it would have been obvious to have arrived at these particular amounts of stabilizer through the use of routine experimentation. While Applicant does not acquiesce that this claim would be obvious over JP '959, Applicant does believe claim 27 is allowable at least based on its relation to amended claim 22 which is believed to be in allowable form. Reconsideration and allowance of claim 27 are respectfully requested.

On page 4 of the Office Action, claims 19, 20, 30-32, 39, 40, 57, 58, 65, and 66 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '455 taken together with either one of Hudson et al. (U.S. Pat. 7,264,840), Wiker et al. (U.S. Pat. 4,421,770), or Rapp et al. (no patent number included). While Applicant does not submit that claims 19, 20, 30-32, 39, 40, 57, 58, 65, and 66 are obvious over the JP '455 together with either one of Hudson et al., Wiker et al., or Rapp

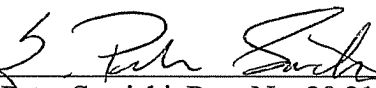
et al., Applicant does believe that these claims are allowable at least based on their relation to independent claims 1, 22, 35, 53, and 61

Reconsideration and allowance of all claims within the application are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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